

AMENDED IN ASSEMBLY AUGUST 25, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 9, 2003

**SENATE BILL**

**No. 18**

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**Introduced by Senators Burton, Chesbro, and Ducheny**

December 2, 2002

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An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65351, 65453, and 65560 of, and to add Sections 65351.1 and 65562.5 to, the Government Code, to amend Sections 7050.5 and 7054 of the Health and Safety Code, and to amend Sections 5097.9, 5097.91, 5097.92, 5097.94, 5097.96, 5097.97, 5097.98, 5097.99, and 5097.995 of, to add Sections 5097.10, 5097.96.1, 5097.96.2, 5097.96.3, 5097.96.4, 5097.96.5, 5097.993, 21084.3, and 21097 to, and to amend the heading of Chapter 1.75 (commencing with Section 5097.9) of Division 5 of, the Public Resources Code, relating to Traditional Tribal Cultural Sites, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional Tribal Cultural Sites.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

This bill would establish the Traditional Tribal Cultural Site (TTCS) Register and would require the commission to develop, maintain, and

administer it, as specified. The bill would declare various powers and duties of the commission, including the duty to determine whether a proposed development project may affect a TTCS and whether that project will result in a substantial adverse change in a TTCS. The bill would establish procedures for challenging and reviewing the commission's ~~decisions~~ *determinations*, including procedures to protect the confidentiality of any information that would create a risk of harm to a TTCS. The bill would exempt the TTCS Register from disclosure as a public record. The bill would make it a misdemeanor to intentionally release information about a TTCS, knowing that it is required to be held confidential, thereby creating a new crime and imposing a state-mandated local program.

(2) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.

This bill would create additional exemptions from CEQA, but would prohibit an exemption from CEQA for a project that the commission determines may cause a substantial adverse change in a TTCS. The bill would specify certain unique procedures that a lead agency must follow when a project may adversely affect a TTCS. By imposing these additional duties on lead agencies, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.



With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Native Americans have used, and continue to use, natural  
4 settings, referred to as “Traditional Tribal Cultural Sites”, in the  
5 conduct of ceremonies and spiritual practices that provide the  
6 moral and ethical foundation of Native societies and are essential  
7 elements in tribal cultural traditions.

8 (2) Native American places of spiritual and ceremonial  
9 importance reflect the tribes’ continuing cultural ties to the land  
10 and to their ancestral heritage.

11 (3) These sites are used for prayer, vision quests,  
12 medicine-making, and traditional ceremonies. They are  
13 considered holy and sacrosanct by California’s Native American  
14 people. Many are significant to the tribes’ cultural society and to  
15 their continued existence as a people.

16 (4) To further and perpetuate the cultural tradition and spiritual  
17 practices of California tribes, these Traditional Tribal Cultural  
18 Sites require preservation.

19 (5) California had the largest aboriginal population in North  
20 America before contact with non-Native Americans. Yet,  
21 California Native American tribes suffered the greatest losses  
22 from termination, removal and assimilation policies, including the  
23 loss of a majority of their lands and Traditional Tribal Cultural  
24 Sites. This devastation debilitated tribal cultural identity and  
25 threatened the survival of California Native American people.

26 (6) In addition to the lingering effects of these historic policies,  
27 the continued loss of Traditional Tribal Cultural Sites for more  
28 than the past three centuries has caused further debilitating impacts



1 on the cultural traditions and tribal identity of California Native  
2 Americans.

3 (b) In recognition of Native American tribal sovereignty and  
4 the unique relationship between California state government and  
5 California tribal governments, it is the intent of the Legislature, in  
6 enacting this act, to accomplish all of the following:

7 (1) Recognize that Traditional Tribal Cultural Sites are  
8 essential elements in tribal cultural tradition and identity.

9 (2) Provide protection for Traditional Tribal Cultural Sites  
10 through listing on a confidential registry overseen by the Native  
11 American Heritage Commission, and establish a legal framework  
12 by which sites listed on, or eligible for listing on, the Traditional  
13 Tribal Cultural Sites Registry may be defended and preserved.

14 (3) Protect the access to and ability of Native Americans to  
15 engage in cultural and traditional practices in a meaningful way at  
16 Traditional Tribal Cultural Sites through the facilitation of access  
17 agreements and other methods of providing legal assurances to  
18 both land owners and Native American tribes.

19 (4) Require meaningful consultation among the Native  
20 American Heritage Commission, property owners, public  
21 agencies, project proponents, and Native American tribes at the  
22 earliest possible point in the planning, acquisition, and the  
23 environmental review of a proposed development project that  
24 might adversely impact a Traditional Tribal Cultural Site.

25 (5) Provide for the development of treatment agreements,  
26 programmatic agreements, and mutually acceptable mitigation  
27 agreements, and promote the avoidance of development of  
28 Traditional Tribal Cultural Sites.

29 (6) Provide a measure of protection to Traditional Tribal  
30 Cultural Sites on public lands and state-managed federal lands.

31 SEC. 2. Section 815.3 of the Civil Code is amended to read:

32 815.3. Only the following entities or organizations may  
33 acquire and hold conservation easements:

34 (a) A tax-exempt nonprofit organization qualified under  
35 Section 501(c)(3) of the Internal Revenue Code and qualified to  
36 do business in this state, that has as its primary purpose the  
37 preservation, protection, or enhancement of land in its natural,  
38 scenic, historical, agricultural, forested, or open-space condition  
39 or use.



1 (b) The state or a city, county, city and county, district, or other  
2 state or local governmental entity, if otherwise authorized to  
3 acquire and hold title to real property and if the conservation  
4 easement is voluntarily conveyed. No local governmental entity  
5 may condition the issuance of an entitlement for use on the  
6 applicant's granting of a conservation easement pursuant to this  
7 chapter.

8 (c) A federally recognized California Indian tribe or a  
9 nonfederally recognized California Indian tribe, band, or nation  
10 listed on the Native American Contact List maintained by the  
11 Native American Heritage Commission pursuant to subdivision  
12 (d) of Section 5097.94 of the Public Resources Code.

13 SEC. 3. Section 65040.2 of the Government Code is amended  
14 to read:

15 65040.2. (a) In connection with its responsibilities under  
16 subdivision (l) of Section 65040, the office shall develop and adopt  
17 guidelines for the preparation and content of the mandatory  
18 elements required in city and county general plans by Article 5  
19 (commencing with Section 65300) of Chapter 3 of Division 1 of  
20 Title 7. For purposes of this section, the guidelines prepared  
21 pursuant to Section 50459 of the Health and Safety Code shall be  
22 the guidelines for the housing element required by Section 65302.  
23 In the event that additional elements are hereafter required in city  
24 and county general plans by Article 5 (commencing with Section  
25 65300) of Chapter 3, the office shall adopt guidelines for those  
26 elements within six months of the effective date of the legislation  
27 requiring those additional elements.

28 (b) The office may request from each state department and  
29 agency, as it deems appropriate, and the department or agency  
30 shall provide, technical assistance in readopting, amending, or  
31 repealing the guidelines.

32 (c) The guidelines shall be advisory to each city and county in  
33 order to provide assistance in preparing and maintaining their  
34 respective general plans.

35 (d) The guidelines shall contain the guidelines for addressing  
36 environmental justice matters developed pursuant to Section  
37 65040.12.

38 (e) The guidelines shall contain advice including  
39 recommendations for best practices to allow for collaborative land  
40 use planning of adjacent civilian and military lands and facilities.



1 The guidelines shall encourage enhanced land use compatibility  
2 between civilian lands and any adjacent or nearby military  
3 facilities through the examination of potential impacts upon one  
4 another.

5 (f) The guidelines shall contain advice for addressing the  
6 effects of civilian development on military readiness activities  
7 carried out on all of the following:

8 (1) Military installations.

9 (2) Military operating areas.

10 (3) Military training areas.

11 (4) Military training routes.

12 (5) Military airspace.

13 (6) Other territory adjacent to those installations and areas.

14 (g) The guidelines shall contain advice for consulting with  
15 Native American tribes and the Native American Heritage  
16 Commission for the preservation of sites listed in the Traditional  
17 Tribal Cultural Site Register established under subdivision (a) of  
18 Section 5097.96 of the Public Resources Code, including  
19 procedures for protecting the confidentiality of information  
20 concerning the specific identity, location, character or use of those  
21 sites. “Native American tribe” and “Traditional Tribal Cultural  
22 Site Register” shall have the meanings provided in Section  
23 5097.10 of the Public Resources Code.

24 (h) The office shall provide for regular review and revision of  
25 the guidelines established pursuant to this section.

26 SEC. 4. Section 65351 of the Government Code is amended  
27 to read:

28 65351. During the preparation or amendment of the general  
29 plan, the planning agency shall provide opportunities for the  
30 involvement of citizens, public agencies, public utility companies,  
31 Native American tribes identified on the Native American Contact  
32 List maintained by the Native American Heritage Commission  
33 pursuant to subdivision (d) of Section 5097.94 of the Public  
34 Resources Code, and civic, education, and other community  
35 groups, through public hearings and any other means the city or  
36 county deems appropriate.

37 SEC. 5. Section 65351.1 is added to the Government Code, to  
38 read:

39 65351.1. Prior to adoption, revision, amendment, or update of  
40 a city or county’s general plan, the city or county shall consult with



1 the Native American Heritage Commission and any appropriate  
2 Native American tribes identified on the Native American Contact  
3 List maintained by the commission for the purpose of preserving  
4 the sites listed in the Traditional Tribal Cultural Site Register  
5 (“TTCS Register”) that are located within the city or county’s  
6 jurisdiction. An “appropriate Native American tribe” and “TTCS  
7 Register” shall have the meanings provided in Section 5097.10 of  
8 the Public Resources Code. Consistent with the guidelines  
9 developed by the Office of Planning and Research pursuant to  
10 Section 65040.2, cities and counties shall protect the  
11 confidentiality of information concerning the specific identity,  
12 location, character, or use of the listed sites.

13 SEC. 6. Section 65453 of the Government Code is amended  
14 to read:

15 65453. (a) A specific plan shall be prepared, adopted, and  
16 amended in the same manner as a general plan, except that a  
17 specific plan may be adopted by resolution or by ordinance and  
18 may be amended as often as deemed necessary by the legislative  
19 body. Adoption or amendment of a specific plan shall be subject  
20 to the consultation requirements of Section 65351.1.

21 (b) A specific plan may be repealed in the same manner as it is  
22 required to be amended.

23 SEC. 7. Section 65560 of the Government Code is amended  
24 to read:

25 65560. (a) “Local open-space plan” is the open-space  
26 element of a county or city general plan adopted by the board or  
27 council, either as the local open-space plan or as the interim local  
28 open-space plan adopted pursuant to Section 65563.

29 (b) “Open-space land” is a parcel or area of land or water that  
30 is essentially unimproved and devoted to an open-space use as  
31 defined in this section, and that is designated on a local, regional  
32 or state open-space plan as any of the following:

33 (1) Open space for the preservation of natural resources,  
34 including, but not limited to, sites listed in the Native American  
35 Traditional Tribal Cultural Site Register established under Section  
36 5097.96 of the Public Resources Code, areas required for the  
37 preservation of plant and animal life, including habitat for fish and  
38 wildlife species; areas required for ecological and other scientific  
39 study purposes; rivers, streams, bays and estuaries; areas adjacent  
40 to military installations, military training routes, and restricted



1 airspace that can provide additional buffer zones to military  
2 activities and complement the resource values of the military  
3 lands; and coastal beaches, lakeshores, banks of rivers and  
4 streams, and watershed lands.

5 (2) Open space used for the managed production of resources,  
6 including, but not limited to, forest lands, rangeland, agricultural  
7 lands and areas of economic importance for the production of food  
8 or fiber; areas required for recharge of groundwater basins; bays,  
9 estuaries, marshes, rivers and streams which are important for the  
10 management of commercial fisheries; and areas containing major  
11 mineral deposits, including those in short supply.

12 (3) Open space for outdoor recreation, including, but not  
13 limited to, areas of outstanding scenic, historic and cultural value;  
14 areas particularly suited for park and recreation purposes,  
15 including access to lakeshores, beaches, and rivers and streams;  
16 and areas that serve as links between major recreation and  
17 open-space reservations, including utility easements, banks of  
18 rivers and streams, trails, and scenic highway corridors.

19 (4) Open space for public health and safety, including, but not  
20 limited to, areas that require special management or regulation  
21 because of hazardous or special conditions such as earthquake  
22 fault zones, unstable soil areas, flood plains, watersheds, areas  
23 presenting high fire risks, areas required for the protection of water  
24 quality and water reservoirs, and areas required for the protection  
25 and enhancement of air quality.

26 SEC. 8. Section 65562.5 is added to the Government Code, to  
27 read:

28 65562.5. If land designated, or proposed to be designated, as  
29 open space contains a site listed in the Traditional Tribal Cultural  
30 Site Register established under Section 5097.96 of the Public  
31 Resources Code, the city or county in which the site is located shall  
32 consult with the Native American Heritage Commission and the  
33 appropriate Native American tribe, as defined by Section 5097.10  
34 of the Public Resources Code, for the purposes of determining the  
35 level of confidentiality required to protect the specific identity,  
36 location, character, or use of the listed site, and developing proper  
37 treatment of the site in any corresponding management plan, if one  
38 will be developed for the listed area.

39 SEC. 9. Section 7050.5 of the Health and Safety Code is  
40 amended to read:



1 7050.5. (a) Every person who knowingly mutilates or  
2 disinters, wantonly disturbs, or willfully removes any human  
3 remains in or from any location other than a dedicated cemetery  
4 without authority of law is guilty of a misdemeanor, except as  
5 provided in Section 5097.99 of the Public Resources Code. This  
6 subdivision does not apply to any person carrying out an  
7 agreement developed pursuant to subdivision (o) of Section  
8 5097.94 of the Public Resources Code or to any person authorized  
9 to implement Section 5097.98 of the Public Resources Code.

10 (b) In the event of discovery or recognition of any human  
11 remains in any location other than a dedicated cemetery, there shall  
12 be no further excavation or disturbance of the site or any nearby  
13 area reasonably suspected to overlie adjacent remains until the  
14 coroner of the county in which the human remains are discovered  
15 has determined, in accordance with Chapter 10 (commencing with  
16 Section 27460) of Part 3 of Division 2 of Title 3 of the Government  
17 Code, that the remains are not subject to the provisions of Section  
18 27491 of the Government Code or any other related provisions of  
19 law concerning investigation of the circumstances, manner and  
20 cause of any death, and the recommendations concerning the  
21 treatment and disposition of the human remains have been made  
22 to the person responsible for the excavation, or to his or her  
23 authorized representative, in the manner provided in Section  
24 5097.98 of the Public Resources Code. The coroner shall make his  
25 or her determination within two working days from the time the  
26 person responsible for the excavation, or his or her authorized  
27 representative, notifies the coroner of the discovery or recognition  
28 of the human remains.

29 (c) If the coroner determines that the remains are not subject to  
30 his or her authority and if the coroner recognizes the human  
31 remains to be those of a Native American, or has reason to believe  
32 that they are those of a Native American, he or she shall contact,  
33 by telephone within 24 hours, the Native American Heritage  
34 Commission.

35 SEC. 10. Section 7054 of the Health and Safety Code is  
36 amended to read:

37 7054. (a) (1) Except as authorized pursuant to the sections  
38 referred to in subdivision (b), every person who deposits or  
39 disposes of any human remains in any place, except in a cemetery,  
40 is guilty of a misdemeanor.



1 (2) Every licensee or registrant pursuant to Chapter 12  
2 (commencing with Section 7600) or Chapter 19 (commencing  
3 with Section 9600) of Division 3 of the Business and Professions  
4 Code and the agents and employees of the licensee or registrant,  
5 or any unlicensed person acting in a capacity in which a license  
6 from the Cemetery and Funeral Bureau is required, who, except as  
7 authorized pursuant to the sections referred to in subdivision (b),  
8 deposits or disposes of any human remains in any place, except in  
9 a cemetery, is guilty of a misdemeanor that shall be punishable by  
10 imprisonment in a county jail not exceeding one year, by a fine not  
11 exceeding ten thousand dollars (\$10,000), or both that  
12 imprisonment and fine.

13 (b) Cremated remains may be disposed of pursuant to Sections  
14 7054.6, 7116, 7117, and 103060.

15 (c) Subdivision (a) of this section does not apply to the reburial  
16 of Native American remains under an agreement developed  
17 pursuant to subdivision (o) of Section 5097.94 of the Public  
18 Resources Code, or implementation of a recommendation or  
19 agreement made pursuant to Section 5097.98 of the Public  
20 Resources Code.

21 SEC. 11. The heading of Chapter 1.75 (commencing with  
22 Section 5097.9) of Division 5 is amended to read:

23

24 CHAPTER 1.75. NATIVE AMERICAN HERITAGE AND TRADITIONAL  
25 TRIBAL CULTURAL SITES.

26

27 SEC. 12. Section 5097.9 of the Public Resources Code is  
28 amended to read:

29 5097.9. A public agency and a private party using or  
30 occupying public property, or operating on public property, under  
31 a public license, permit, grant, lease, or contract made on or after  
32 July 1, 1977, may not in any manner whatsoever interfere with the  
33 free expression or exercise of Native American religion as  
34 provided in the United States Constitution and the California  
35 Constitution; nor shall any such agency or party cause significant  
36 and irreparable damage to a Native American sanctified cemetery,  
37 place of worship, religious or ceremonial site, or sacred shrine  
38 located on public property, except on a clear and convincing  
39 showing that the public interest and necessity so require. The



1 provisions of this chapter shall be enforced by the commission,  
2 pursuant to Sections 5097.94 and 5097.97.

3 This chapter may not be construed to limit the requirements of  
4 the California Environmental Quality Act (Division 13  
5 (commencing with Section 21000)).

6 Nothing in this section may be construed to nullify protections  
7 for Native American cemeteries under other statutes.

8 SEC. 13. Section 5097.10 is added to the Public Resources  
9 Code, to read:

10 5097.10. As used in this chapter, the following terms have the  
11 following meanings:

12 (a) “Appropriate Native American tribe” means a Native  
13 American tribe determined by the commission to have attached  
14 traditional tribal cultural significance to the TTCS at issue.

15 (b) “Commission” means the Native American Heritage  
16 Commission.

17 (c) “Consultation” means the meaningful and timely process  
18 of seeking, discussing, and considering carefully the views of  
19 others, in a manner that is cognizant of all parties’ cultural values,  
20 and where feasible, seeking agreement. Consultation between  
21 government agencies and Native American tribes shall be  
22 conducted in a way that is mutually respectful of each party’s  
23 sovereignty. Consultation shall also recognize the tribe’s potential  
24 need for confidentiality with respect to sites that have traditional  
25 tribal cultural significance.

26 (d) “Consulting parties” means the appropriate Native  
27 American tribes, owners of property within the site’s boundaries,  
28 the project proponent, the lead agency, and public agencies with  
29 jurisdiction over the area in which the effects of a project may  
30 occur or having principal responsibility for carrying out or  
31 approving a project. Other individuals or organizations with a  
32 demonstrated interest in the project, due to the nature of their legal,  
33 cultural, or economic relation to the project or affected property,  
34 may participate at the commission’s discretion. The commission  
35 shall exercise that discretion in accordance with criteria adopted  
36 by the commission.

37 (e) ~~“Determination”~~ “*Final determination*” means a final  
38 decision issued by the commission, ~~including a decision~~ regarding  
39 the listing of a site in the TTCS Register, whether a TTCS may be



1 affected by a proposed project, or whether a proposed project may  
2 result in a substantial adverse change to a TTCS.

3 (f) “Eligible for listing in the TTCS Register” means a site that  
4 is not listed in the TTCS Register, but if the commission were to  
5 consider the site for listing pursuant to Section 5097.96, it would  
6 likely find that the site meets the criteria for listing. The  
7 determination of eligibility may be delegated to the executive  
8 secretary. The executive secretary shall comply with criteria  
9 adopted pursuant to subdivision (b) of Section 5097.96 and with  
10 procedures set forth in Section 5097.96.1.

11 (g) “Gathering site” means an area where traditional food,  
12 plants, or other materials or cultural objects, including, but not  
13 limited to, baskets, tools, ropes, nets, ceremonial items, clothing,  
14 and personal adornments that are used in a traditional practice by  
15 a Native American tribe, are gathered, collected, assembled, or  
16 maintained.

17 (h) “Lead agency” has the same meaning as the definition in  
18 Section 21067.

19 (i) “Native American Contact List” means the list developed  
20 and maintained by the commission pursuant to subdivision (d) of  
21 Section 5097.94 that identifies those Native American tribes to be  
22 notified and consulted pursuant to this chapter and the  
23 requirements of the California Environmental Quality Act  
24 (Division 13 (commencing with Section 21000)).

25 (j) “Native American tribe” means a federally recognized  
26 California Indian tribe listed on the Federal Register and any  
27 nonfederally recognized California Indian tribe, band, or nation  
28 listed on the Native American Contact List maintained by the  
29 commission.

30 (k) “Project” has the same meaning as the definition in Section  
31 21065.

32 (l) ~~Substantial~~ “*Substantial* adverse change in a TTCS” means  
33 a direct or reasonably foreseeable indirect change to the physical  
34 characteristics of a TTCS in a manner that would diminish the  
35 traditional cultural significance of the TTCS.

36 (m) “Traditional Tribal Cultural Site” or “TTCS” means a site  
37 listed in, or determined by the commission to be eligible for listing  
38 in, the TTCS Register based on the criteria for listing established  
39 by the commission through regulations adopted pursuant to  
40 subdivision (b) of Section 5097.96. These criteria shall identify a



1 TTCS as a site that is traditionally associated with, or has served  
2 as the site for engaging in activities related to, the traditional  
3 beliefs, cultural practices, or ceremonies of a Native American  
4 tribe. A TTCS shall be a reasonably delineated physical location  
5 identifiable by physical characteristics. The TTCS Register is in  
6 no way intended to infringe on Native American tribes' sovereign  
7 rights to define their own sites of religious and cultural  
8 significance for their own purposes. The fact that a tribe has not  
9 nominated a site for inclusion in the TTCS Register may not be  
10 evidence that the site is not sacred or significant.

11 (n) "Traditional Tribal Cultural Site Register" or "TTCS  
12 Register" means the Native American Traditional Tribal Cultural  
13 Site Register established and maintained by the commission  
14 pursuant to Section 5097.96.

15 SEC. 14. Section 5097.91 of the Public Resources Code is  
16 amended to read:

17 5097.91. There is in state government a Native American  
18 Heritage Commission, consisting of nine members appointed by  
19 the Governor with the advice and consent of the Senate. The  
20 executive secretary of the commission shall be appointed by the  
21 Governor.

22 SEC. 15. Section 5097.92 of the Public Resources Code is  
23 amended to read:

24 5097.92. (a) The nine-member commission shall be  
25 composed of all the following members:

26 (1) Six members shall be elders, traditional people, or spiritual  
27 leaders of California Native American tribes, nominated by Native  
28 American organizations, tribes, or groups within the state. Two  
29 members shall be from the northern region of the state, two  
30 members from the central region, and two from the southern  
31 region.

32 (2) Two members shall be recognized professionals in one or  
33 more of the following disciplines: ethnohistory, archaeology,  
34 anthropology, ethnography, or other related disciplines.

35 (3) One member shall represent the public or possess expertise  
36 in fields of expertise the Governor deems necessary or desirable  
37 to enable the commission to carry out its responsibilities.

38 (b) Each member of the commission shall have one vote.  
39 Except as provided in subdivision (c), a majority of the total  
40 appointed membership of the commission shall constitute a



1 quorum. Any action taken by the commission under this chapter  
2 requires a majority vote of the members present at the meeting of  
3 the commission, with a quorum being present, unless otherwise  
4 specifically provided for in this chapter.

5 (c) (1) The commission may appoint regional committees of  
6 three members of the commission to carry on investigations,  
7 inquiries, or hearings pursuant to Sections 5097.96, 5097.96.1,  
8 5097.96.2, and 5097.96.3. Each regional committee shall be  
9 comprised of the two tribal commission members representing the  
10 region where the subject TTCS or proposed TTCS is located. The  
11 *final* determination of the three-member committee shall become  
12 the ~~decision~~ *final determination* of the commission unless  
13 appealed to the full commission.

14 (2) ~~Appeals of decisions~~ *An appeal of a final determination* by  
15 the regional committee may be filed by any party to the procedure  
16 within 30 days of issuance of the regional committee's ~~decision~~  
17 *final determination*.

18 (3) All actions of the regional committee are subject to Section  
19 5097.96.5.

20 SEC. 16. Section 5097.94 of the Public Resources Code is  
21 amended to read:

22 5097.94. The commission shall have the following powers  
23 and duties:

24 (a) For purposes of the California Environmental Quality Act  
25 (Division 13 (commencing with Section 21000)) only, the  
26 commission shall constitute a trustee agency having jurisdiction  
27 by law over Native American archaeological resources and  
28 TTCSs. The trustee agency status of the commission does not  
29 impair or alter any sovereign rights that a Native American tribe  
30 may have with respect to any of those resources.

31 (b) To identify and catalog places of special religious or social  
32 significance to Native Americans, and known graves and  
33 cemeteries of Native Americans on private lands. The  
34 identification and cataloguing of known graves and cemeteries  
35 shall be completed on or before January 1, 1984. The commission  
36 shall notify landowners on whose property those graves and  
37 cemeteries are determined to exist, and shall identify the Native  
38 American tribe most likely descended from those Native  
39 Americans who may be interred on the property.



1 (c) To make recommendations relative to sites listed in the  
2 TTCS Register that are located on private lands, and are  
3 inaccessible to Native Americans, and have cultural significance  
4 to Native American tribes for acquisition by the state or other  
5 public agencies for the purpose of facilitating or assuring access  
6 thereto by the appropriate Native American tribes.

7 (d) To develop and maintain the Native American Contact List.  
8 That list shall identify those Native American tribes eligible to be  
9 notified or consulted pursuant to this chapter and the California  
10 Environmental Quality Act (Division 13 (commencing with  
11 Section 21000)). The list shall include all Native American tribes,  
12 as defined in subdivision (j) of Section 5097.10 , and a designated  
13 representative contact person and address for each tribe. For  
14 purposes of this chapter, the commission shall develop criteria to  
15 identify and include Native American tribes that do not have  
16 federal recognition. For the purpose of complying with  
17 requirements relating to notice and consultation, the list shall be  
18 organized by counties or portions of counties to identify the Native  
19 American tribe or tribes that have attached traditional cultural  
20 significance to each county or portion thereof.

21 (e) To make recommendations to the Legislature relative to  
22 procedures and incentives that will voluntarily encourage private  
23 property owners to preserve and protect sites listed in the TTCS  
24 Register and to allow appropriate access to Native American tribes  
25 for traditional tribal cultural activities.

26 (f) To employ and prescribe duties for staff members as  
27 necessary to carry out the provisions of this chapter.

28 (g) To employ an attorney at law and assistant attorneys as  
29 necessary. The attorney shall act as the attorney and legal adviser  
30 of the commission, ~~including~~ and shall have duties, including, but  
31 not limited to, representing the commission before public  
32 agencies. If the Attorney General is unable to represent the  
33 commission in a judicial proceeding due to a conflict of interest or  
34 other reason, the commission may be represented by the  
35 commission's attorney or a private attorney pursuant to Section  
36 11040 of the Government Code.

37 (h) To accept grants or donations, real or in kind, to carry out  
38 the purposes of this chapter.

39 (i) To make recommendations to the Director of Parks and  
40 Recreation and the California Arts Council relative to the



1 California State Indian Museum and other Indian matters touched  
2 upon by department programs.

3 (j) To bring an action to prevent significant and irreparable  
4 damage to, or assure appropriate access for Native Americans to,  
5 a Native American sanctified cemetery, place of worship, religious  
6 or ceremonial site, sacred shrine, or sites listed in the TTCS  
7 Register located on public property, pursuant to Section 5097.97.  
8 If the court finds that significant and irreparable damage will occur  
9 or that appropriate access will be denied, and appropriate  
10 mitigation measures are not available, it shall issue an injunction,  
11 unless it finds, on clear and convincing evidence, that the public  
12 interest and necessity require otherwise. The Attorney General  
13 shall represent the commission and the state in litigation  
14 concerning affairs of the commission, unless the Attorney General  
15 has determined to represent the agency against whom the  
16 commission's action is directed, in which case the commission  
17 shall be authorized to represent itself or employ other counsel as  
18 needed. In any action to enforce the provisions of this subdivision  
19 the commission shall introduce evidence showing that a cemetery,  
20 place, site, or shrine has been historically regarded as a sacred or  
21 sanctified place by Native American people and represents a place  
22 of unique historical and cultural significance to a Native American  
23 tribe.

24 (k) To request and utilize the advice and service of all federal,  
25 state, local, and regional agencies.

26 (l) To assist Native American tribes in obtaining appropriate  
27 access to and protection for sites listed in the TTCS Register that  
28 are located on public or private lands for ceremonial or spiritual  
29 activities.

30 (m) To assist state agencies in any negotiations with agencies  
31 of the federal government for the protection of TTCSs that are  
32 located on federal lands.

33 (n) To mediate, upon application of either of the parties,  
34 disputes arising between landowners and known descendents  
35 relating to the treatment and disposition of Native American  
36 human burials, skeletal remains, and items associated with Native  
37 American burials.

38 (o) To assist interested landowners in developing agreements  
39 with appropriate Native American tribes for leaving in place,  
40 treating or disposing of, with appropriate dignity, the human



1 remains and any items associated with Native American burials.  
2 The agreements shall provide protection to Native American  
3 human burials and skeletal remains from vandalism and  
4 inadvertent destruction and provide, where remains are not left in  
5 place, for sensitive treatment and disposition of Native American  
6 burials, skeletal remains, and associated grave goods consistent  
7 with the planned use of, or the approved project on, the land. The  
8 commission shall adopt guidelines governing the process and  
9 requirements for Native American monitoring.

10 (p) To adopt criteria and procedures for the TTCS Register and  
11 oversee the administration of the TTCS Register.

12 (q) To oversee the administration of, and participate in the  
13 consultation process pursuant to, this chapter and adopt, as  
14 necessary, consultation process criteria and procedures.

15 (r) To assist Native American tribes in obtaining access to and  
16 protection for gathering sites that are not included in the TTCS  
17 Register, and to develop criteria to assist in the identification of  
18 feasible or potentially feasible measures to avoid or mitigate  
19 potential impacts to gathering sites.

20 (s) To develop and maintain a site records check service for the  
21 purpose of providing limited information, consistent with the  
22 confidentiality requirements of Section 5097.96.5, on the  
23 presence or absence of a site on the TTCS Register or a site that  
24 has been nominated for listing. The Native American Heritage  
25 Commission shall identify the appropriate Native American tribes  
26 on the Native American Contact List for the site.

27 (t) To adopt rules and regulations, as necessary, to carry out the  
28 provisions of this chapter in conformity with the provisions of  
29 Chapter 3.5 (commencing with Section 11340) of Part 1 of  
30 Division 3 of Title 2 of the Government Code. The commission  
31 may not begin listing TTCSs on the TTCS Register, or make  
32 ~~determinations~~ *a determination* about whether a site is eligible to  
33 be listed in the TTCS Register, until the 30th day after the date of  
34 filing with the Secretary of State the initial set of regulations to  
35 implement subdivision (d) of Section 5097.94, subdivisions (b)  
36 and (c) of Section 5097.96, or subdivision (a) of Section  
37 5097.96.5, whichever occurs last. The commission may not make  
38 a determination pursuant to Section 5097.96.1 or 5097.96.2, or  
39 identify project changes or mitigation measures pursuant to  
40 Section 5097.96.3 until the 121st day after the date of filing with



1 the Secretary of State the initial set of regulations to implement  
2 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of  
3 Section 5097.96, or subdivision (a) of Section 5097.96.5,  
4 whichever occurs last. The commission shall adopt these initial  
5 sets of regulations within one year of the effective date of the act  
6 that amended this section during the 2003–04 Regular Session of  
7 the Legislature. In drafting and promulgating rules and regulations  
8 that may have substantial effects on the Native American tribes,  
9 the commission shall consult with, and allow for, active  
10 participation by the Native American tribes.

11 SEC. 17. Section 5097.96 of the Public Resources Code is  
12 amended to read:

13 5097.96.

14 (a) The Traditional Tribal Cultural Site Register or TTCS  
15 *Register* is hereby established and shall be maintained and  
16 administered by the commission. The TTCS Register is in no way  
17 intended to infringe on Native American tribes' sovereign rights  
18 to define their own sites of religious and cultural significance for  
19 their own purposes. The fact that a tribe has not nominated a site  
20 for inclusion in the TTCS Register may not be evidence that the  
21 site is not sacred or significant.

22 (b) Consistent with the definition of TTCS in ~~subdivision (l)~~ of  
23 Section 5097.10, the commission shall adopt regulations  
24 establishing criteria to list sites in the TTCS Register. The  
25 commission shall acknowledge that Native American tribes  
26 possess special expertise in identifying TTCSs and shall consult  
27 with them and encourage active participation in developing the  
28 criteria consistent with subdivision (t) of Section 5097.94.

29 (c) The commission on its own initiative, or any appropriate  
30 Native American tribe, may nominate a site for listing in the TTCS  
31 Register. The commission shall adopt regulations establishing  
32 procedures for the nomination and listing of sites in the TTCS  
33 Register in a manner that shall protect the confidentiality concerns  
34 of Native American tribes. The procedures shall provide the  
35 following:

36 (1) All requests to the commission for nomination of sites in the  
37 TTCS Register shall be supported by sufficient evidence to  
38 facilitate meaningful review of the request.

39 (2) Prior to acting on the nomination of a site to be added to the  
40 TTCS Register, the commission shall notify the Native American



1 tribe nominating the site, all owners of property within the site’s  
2 boundaries, and other appropriate Native American tribes, and  
3 provide not less than 30 days for written comments on the  
4 nomination. The commission shall accept and consider these  
5 comments and any other comments it receives during the comment  
6 period, and other appropriate information in determining whether  
7 to list the site in the TTCS Register.

8 (3) Except where appropriate to maintain the confidentiality of  
9 information concerning the specific identity, location, character,  
10 or use of the proposed TTCS, the commission may seek and  
11 consider the views of the public.

12 (4) The commission may hold a hearing to accept additional  
13 comments regarding the requested nomination. Any hearing by  
14 the commission to accept additional comments may be closed to  
15 the public to maintain the confidentiality of information  
16 concerning the specific identity, location, character, or use of the  
17 site.

18 (5) The commission shall prepare proposed written findings to  
19 support its *proposed* determination concerning the site nominated  
20 for listing in the TTCS Register. The proposed findings shall  
21 describe in general terms the traditional cultural significance of the  
22 site, define its boundaries, and identify any appropriate Native  
23 American tribes. The commission shall provide notice of its  
24 proposed determination and findings to the parties identified in  
25 paragraph (2), and shall provide those parties 30 days to submit  
26 written comments to the commission regarding the proposed  
27 determination and findings. The commission’s proposed  
28 determination and findings shall constitute a final ~~decision~~  
29 *determination* by the commission if no comments are submitted to  
30 the commission during the 30-day comment period. If written  
31 comments are submitted to the commission during that comment  
32 period, the commission shall consider the comments, and may  
33 modify the proposed determination and findings before making a  
34 final ~~decision~~ *determination*.

35 (d) The commission, in accordance with procedures it adopts,  
36 shall provide notice of ~~any decision~~ *a final determination* to list a  
37 site in the TTCS Register to the Native American tribe nominating  
38 the site, all owners of property within the site’s boundaries, and  
39 other appropriate Native American tribes. The owner of property  
40 that contains a site listed in the TTCS Register may at any time



1 record in the office of the county recorder of the county in which  
2 the site is located, and the county recorder shall accept for  
3 recording, a written notice of a registered TTCS in the form to be  
4 prescribed by the commission. That notice may only refer  
5 generally and without specificity to the identity, location,  
6 character, and use of the registered TTCS on the property.  
7 Recording of a notice of a registered TTCS shall satisfy any legal  
8 duty of the owner to disclose material facts with respect to the  
9 registered TTCS.

10 (e) The commission shall maintain a list of the sites on the  
11 TTCS Register. The list and all documents pertaining to the list  
12 shall be exempt from disclosure as a public record pursuant to  
13 subdivision (r) of Section 6254 of the Government Code.

14 (f) Notwithstanding subdivisions (c) and (d), the commission  
15 shall develop an expedited procedure to list eligible sites identified  
16 under subdivisions (g) and (h) on a priority basis in the TTCS  
17 Register. The commission shall acknowledge that Native  
18 American tribes possess special expertise in identifying TTCSs  
19 and shall consult with them and encourage active participation in  
20 developing the expedited procedure.

21 (g) Within two years of the date of filing with the Secretary of  
22 State the initial set of regulations to implement subdivision (d) of  
23 Section 5097.94, subdivisions (b) and (c) of Section 5097.96, or  
24 subdivision (a) of Section 5097.96.5, whichever occurs last, the  
25 commission shall complete the evaluation of the eligibility for  
26 listing in the TTCS Register of any site previously identified,  
27 catalogued, or listed by the commission as a site with traditional  
28 cultural significance to Native Americans. If the commission  
29 makes a ~~preliminary decision~~ *proposed determination* not to  
30 include on the TTCS Register any site previously so identified,  
31 catalogued, or listed by the commission, it shall consult with the  
32 appropriate Native American tribe before making a final ~~decision~~  
33 *determination*.

34 (h) The commission may recommend sites listed in the TTCS  
35 for listing by the State Historic Preservation Officer for inclusion  
36 in the California Register. The commission may also determine  
37 that a site that is listed in the National Register of Historic Places  
38 or the California Register of Historical Resources may be eligible  
39 for listing in the TTCS Register. In making this determination, the  
40 commission shall consult with the State Historic Preservation



1 Officer, and the State Historic Preservation Officer shall cooperate  
2 and assist the commission.

3 (i) Any determination by the commission to list a site on the  
4 TTCS Register shall be exempt from the California  
5 Environmental Quality Act (Division 13 (commencing with  
6 Section 21000)).

7 (j) *The listing of a TTCS in the TTCS Register, or the*  
8 *determination that a site is eligible for listing pursuant to Section*  
9 *5097.96.1, does not in itself create an interest in real property.*

10 SEC. 18. Section 5097.96.1 is added to the Public Resources  
11 Code, to read:

12 5097.96.1. (a) Upon receipt of a timely written request for  
13 consultation pursuant to paragraph (1) of subdivision (d) of  
14 Section 21097 by an appropriate Native American tribe, the  
15 commission shall promptly initiate consultation with the  
16 consulting parties to evaluate and determine whether a TTCS may  
17 be affected by the proposed project. In making this determination,  
18 the commission shall ascertain whether the site is listed or is  
19 eligible for listing in the TTCS Register. Except where appropriate  
20 to maintain the confidentiality of information concerning the  
21 specific identity, location, character, or use of the TTCS, the  
22 commission may consider the views of the public.

23 (b) If the site is not registered in the TTCS Register, an  
24 appropriate Native American tribe may ask the commission for a  
25 determination that the site is eligible for listing in the TTCS  
26 Register. The determination of eligibility may be delegated to the  
27 executive secretary. The executive secretary shall, if the power is  
28 delegated by the commission, provide a signed statement  
29 ~~determining whether in setting forth~~ his or her opinion *as to*  
30 *whether* the site likely meets the criteria for listing established  
31 pursuant to subdivision (b) of Section 5097.96. In making ~~the~~ *this*  
32 determination, the executive secretary shall comply with criteria  
33 adopted by the commission. The executive secretary shall seek the  
34 input of, and consult with, appropriate consulting parties in  
35 making a determination pursuant to *this* subdivision. An appeal of  
36 the executive secretary's determination to the commission shall be  
37 made within 10 days of the executive secretary's issuance of the  
38 determination, and the appeal shall be heard and decided by the  
39 commission within 30 days of the appeal. An appeal may not be  
40 made to a regional committee.



1 (c) If the commission determines that there is a TTCS present,  
2 but the proposed project will not alter the physical characteristics  
3 of a TTCS, that determination shall constitute a final  
4 determination by the commission that the TTCS will not be  
5 affected by the proposed project, and the commission's  
6 responsibilities under this section as to that TTCS are fully  
7 discharged.

8 (d) If a TTCS is not excluded pursuant to subdivision (c), the  
9 commission shall proceed, in accordance with Section 5097.96.2.  
10 The obligation for the commission to proceed in accordance with  
11 Section 5097.96.2 does not constitute substantial evidence that the  
12 proposed project may result in a substantial adverse change in a  
13 TTCS.

14 (e) Not later than 45 days after receiving the notice required by  
15 subdivision (d) of Section 21097, the commission shall notify in  
16 writing, the lead agency, the project proponent, and any  
17 appropriate Native American tribes that consulted with the  
18 commission pursuant to this section, of its *final* determination  
19 pursuant to this section. If the commission determines that the  
20 notice does not include all of the information required by  
21 subdivision (d) of Section 21097, the commission shall, within  
22 five days of receipt of the notice, notify the lead agency that the  
23 45-day review period has not begun and identify the necessary data  
24 and information that is missing. The 45-day review period shall  
25 begin when the commission notifies the lead agency that the  
26 missing data and information ~~has~~ *have* been received. The 45-day  
27 period may be extended 15 days upon request by the commission  
28 to the lead agency. Approval of longer or additional extension  
29 requests is in the discretion of the lead agency. If the commission  
30 has not issued its written determination or requested an extension,  
31 the commission's inaction shall be deemed a final ~~decision~~  
32 *determination* by the commission that no TTCS is affected by the  
33 proposed project.

34 SEC. 19. Section 5097.96.2 is added to the Public Resources  
35 Code, to read:

36 5097.96.2. (a) Not later than 75 days after notifying the lead  
37 agency of its *final* determination that a TTCS may be affected by  
38 the proposed project, the commission shall notify in writing, the  
39 lead agency, the project proponent, and any appropriate Native  
40 American tribes that consulted with the commission, of its *final*



1 determination as to whether a proposed project will result in a  
2 substantial adverse change to a TTCS. The 75-day period may be  
3 extended 15 days upon request by the commission to the lead  
4 agency. Approval of longer or additional extension requests *is* in  
5 the discretion of the lead agency. If the commission has not issued  
6 its written determination or requested an extension, the  
7 commission's inaction shall be deemed a final ~~decision~~  
8 *determination* by the commission that the proposed project will  
9 not result in a substantial adverse change in a TTCS.

10 (b) Prior to making ~~the~~ a *final* determination pursuant to  
11 subdivision (a), the commission shall seek the input of and consult  
12 with appropriate consulting parties. The commission shall initiate  
13 that consultation by providing notice within five days after making  
14 a *final* determination that a TTCS may be affected by the proposed  
15 project to appropriate consulting parties. The consulting parties  
16 shall have 30 days from receipt of the notice to provide written  
17 comments to the commission regarding the potential for the  
18 proposed project to result in a substantial adverse change in a  
19 TTCS. The commission shall acknowledge that the appropriate  
20 Native American tribes possess special expertise in participating  
21 in this comment process. Except where appropriate to protect the  
22 confidentiality of information concerning the specific identity,  
23 location, character, or use of the TTCS, the commission may seek  
24 and consider public comment and input.

25 (c) The commission shall accept and consider written  
26 comments submitted to the commission pursuant to subdivision  
27 (b), prior to making a *final* determination whether a proposed  
28 project will result in a substantial adverse change to a TTCS. The  
29 commission, in its discretion, may hold a hearing to accept  
30 additional comments. A hearing by the commission to accept  
31 additional comments may be closed to the public to maintain the  
32 confidentiality of information concerning the specific identity,  
33 location, character, or use of a TTCS.

34 (d) The commission shall prepare proposed written findings to  
35 support its *proposed* determination pursuant to subdivision (a).  
36 The proposed findings shall describe the basis for the *proposed*  
37 determination by the commission. The commission shall provide  
38 notice of its proposed determination and findings to the consulting  
39 parties who were given notice pursuant to subdivision (b), and  
40 shall provide those consulting parties with 10 days to submit



1 written comments to the commission regarding the proposed  
2 determination and findings. The commission's proposed  
3 determination and findings shall constitute a final ~~decision~~  
4 *determination* by the commission if no comments are submitted to  
5 the commission during the comment period. If written comments  
6 are submitted to the commission during the comment period, the  
7 commission shall consider the comments, and modify the  
8 proposed determination and findings, in its discretion, before  
9 making a final ~~decision~~ *determination* consistent with procedures  
10 adopted by the commission.

11 (e) A determination by the commission pursuant to this section  
12 is exempt from the California Environmental Quality Act  
13 (Division 13 (commencing with Section 21000)).

14 SEC. 20. Section 5097.96.3 is added to the Public Resources  
15 Code, to read:

16 5097.96.3. (a) Where the commission, all appropriate Native  
17 American tribes who participated in the consultation process, and  
18 the project proponent agree to incorporate project changes or  
19 mitigation measures that would avoid or reduce substantial  
20 adverse changes in a TTCS to a less than significant level, the  
21 commission shall identify those project changes or mitigation  
22 measures in its findings and notice to the lead agency pursuant to  
23 Section 5097.96.2.

24 (b) Where the commission, all appropriate Native American  
25 tribes who participated in the consultation process, and the project  
26 proponent do not agree to project changes or mitigation measures  
27 that would avoid or reduce substantial adverse changes to a TTCS,  
28 the commission shall identify project changes or mitigation  
29 measures, if any, that would avoid or reduce substantial adverse  
30 changes to a TTCS to a less than significant level in its findings and  
31 notice to the lead agency pursuant to Section 5097.96.2.

32 (c) Identification of project changes or mitigation measures by  
33 the commission pursuant to this section is exempt from the  
34 California Environmental Quality Act (Division 13 (commencing  
35 with Section 21000)).

36 SEC. 21. Section 5097.96.4 is added to the Public Resources  
37 Code, to read:

38 5097.96.4. (a) An appropriate Native American tribe  
39 nominating a site to the TTCS Register, owners of property within  
40 the site's boundaries, or other consulting parties may seek judicial



1 review of a *final* determination by the commission within 90 days  
2 of a *final* determination regarding the listing of a site in the TTCS  
3 Register and within 30 days of any other *final* determination. That  
4 action shall be brought against the commission as a petition for a  
5 writ of mandate pursuant to Section 1094.5 of the Code of Civil  
6 Procedure.

7 (b) In a proceeding, whether in a trial or appellate court,  
8 challenging a *final* determination of the commission, the court  
9 shall protect the confidentiality of any information that would  
10 create a risk of harm to the TTCS by disclosing, for example, its  
11 specific identity, location, character, or use. If and to the extent  
12 there is a risk of harm, the court shall conduct its proceedings in  
13 camera and shall seal records of the proceeding and papers filed  
14 with the court. In ~~determining~~ *deciding* whether there is a risk of  
15 harm to a TTCS, the court may ask the commission to file a brief  
16 addressing that issue and may, in the interim, seal records and  
17 papers and conduct any hearings in camera until it makes a ~~final~~  
18 ~~determination~~ *decision* on the risk of harm issue.

19 SEC. 22. Section 5097.96.5 is added to the Public Resources  
20 Code, to read:

21 5097.96.5. (a) The commission shall adopt regulations  
22 establishing procedures to maintain the confidentiality of  
23 information concerning the specific identity, location, character,  
24 or use of a TTCS.

25 (b) Notwithstanding the California Public Records Act  
26 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
27 Title 1 of the Government Code), the Bagley-Keene Open Meeting  
28 Act (Article 9 (commencing with Section 11120) of Chapter 1 of  
29 Part 1 of Division 3 of Title 2 of the Government Code), or any  
30 other law, no information obtained as a result of, or in connection  
31 with, a nomination or consultation under this chapter that contains  
32 a reference pertaining to the specific identity, location, character,  
33 or use of a TTCS, may be released, except as provided in  
34 subdivision (c). For purposes of this section, “information”  
35 includes, but is not limited to, documents, records, the TTCS  
36 Register itself, nomination forms, declarations, reports, maps,  
37 letters, transcripts, minutes, comments, determinations, and  
38 findings.

39 (c) The commission, owners of property within the site’s  
40 boundaries, the project proponent, the appropriate Native



1 American tribes, other consulting parties authorized under this  
2 chapter, and their respective attorneys and representatives may,  
3 consistent with any procedures the commission adopts, access and  
4 share with each other information for the purpose of participating  
5 in the consultation process pursuant to this chapter.

6 (d) A person who intentionally releases information, knowing  
7 that it is required to be held confidential pursuant to this section,  
8 is guilty of a misdemeanor punishable by a fine of ten thousand  
9 dollars (\$10,000) or by imprisonment in the county jail for not  
10 more than one year, or both.

11 (e) This section does not apply in a case in which all appropriate  
12 Native American tribes waive the application of this section.

13 SEC. 23. Section 5097.97 of the Public Resources Code is  
14 amended to read:

15 5097.97. In the event that a Native American organization,  
16 tribe, group, or individual advises the commission that a proposed  
17 action by a public agency may cause significant and irreparable  
18 damage to a Native American sanctified cemetery, place of  
19 worship, religious or ceremonial site, or sacred shrine located on  
20 public property, or may bar appropriate access thereto by Native  
21 Americans, the commission shall conduct an investigation as to the  
22 effect of the proposed action. Where the commission finds, after  
23 a public hearing, that the proposed action would result in damage  
24 or interference, the commission may recommend mitigation  
25 measures for consideration by the public agency proposing to take  
26 the action. If the public agency fails to accept the mitigation  
27 measures, and if the commission finds that the proposed action  
28 would do significant and irreparable damage to a Native American  
29 sanctified cemetery, place of worship, religious or ceremonial site,  
30 or sacred shrine located on public property, the commission may  
31 ask the Attorney General to take appropriate legal action pursuant  
32 to Section 5097.94.

33 SEC. 24. Section 5097.98 of the Public Resources Code is  
34 amended to read:

35 5097.98. (a) Whenever the commission receives notification  
36 of a discovery of Native American human remains from a county  
37 coroner pursuant to subdivision (c) of Section 7050.5 of the Health  
38 and Safety Code, it shall immediately notify those persons it  
39 believes to be most likely descended from the deceased Native  
40 American. The descendants may, with the permission of the owner



1 of the land, or his or her authorized representative, inspect the site  
2 of the discovery of the Native American remains and may  
3 recommend to the owner or the person responsible for the  
4 excavation work means for avoiding, treating, or disposing of,  
5 with appropriate dignity, the human remains and any associated  
6 grave goods. The descendants shall complete their inspection and  
7 make their recommendation within 24 hours of their notification  
8 by the Native American Heritage Commission. The  
9 recommendation may include the scientific removal and  
10 nondestructive analysis of human remains and items associated  
11 with Native American burials.

12 (b) Whenever the commission is unable to identify a  
13 descendent, or the descendent identified fails to make a  
14 recommendation, or the landowner or his or her authorized  
15 representative rejects the recommendation of the descendent, and  
16 the mediation provided for in subdivision (n) of Section 5097.94  
17 fails to provide measures acceptable to the landowner, the  
18 landowner or his or her authorized representative shall reinter the  
19 human remains and items associated with Native American burials  
20 with appropriate dignity on the property in a location not subject  
21 to further subsurface disturbance.

22 (c) Notwithstanding the provisions of Section 5097.9, the  
23 provisions of this section, including those actions taken by the  
24 landowner or his or her authorized representative to implement  
25 this section and any action taken to implement an agreement  
26 developed pursuant to subdivision (o) of Section 5097.94, shall be  
27 exempt from the requirements of the California Environmental  
28 Quality Act (Division 13 (commencing with Section 21000)).

29 (d) Notwithstanding the provisions of Section 30244, the  
30 provisions of this section, including those actions taken by the  
31 landowner or his or her authorized representative to implement  
32 this section, and any action taken to implement an agreement  
33 developed pursuant to subdivision (o) of Section 5097.94 shall be  
34 exempt from the requirements of the California Coastal Act of  
35 1976 (Division 20 (commencing with Section 30000)).

36 SEC. 25. Section 5097.99 of the Public Resources Code is  
37 amended to read:

38 5097.99. (a) A person may not obtain or possess any Native  
39 American artifacts or human remains that are taken from a Native  
40 American grave or cairn on or after January 1, 1984, except as



1 otherwise provided by law or in accordance with an agreement  
2 reached pursuant to subdivision (o) of Section 5097.94 or pursuant  
3 to Section 5097.98.

4 (b) A person who knowingly or willfully obtains or possesses  
5 any Native American artifacts or human remains that are taken  
6 from a Native American grave or cairn after January 1, 1988,  
7 except as otherwise provided by law or in accordance with an  
8 agreement reached pursuant to subdivision (o) of Section 5097.94  
9 or pursuant to Section 5097.98, is guilty of a felony that is  
10 punishable by imprisonment in the state prison.

11 (c) A person who removes, without authority of law, any  
12 Native American artifacts or human remains from a Native  
13 American grave or cairn with an intent to sell or dissect or with  
14 malice or wantonness is guilty of a felony that is punishable by  
15 imprisonment in the state prison.

16 SEC. 26. Section 5097.993 is added to the Public Resources  
17 Code, to read:

18 5097.993. If any provision of this chapter or the application  
19 thereof to any person or circumstance is held invalid, that  
20 invalidity may not affect other provisions or applications of this  
21 chapter that can be given effect without the invalid provision or  
22 application thereof, and to this end the provisions of this chapter  
23 are severable.

24 SEC. 27. Section 5097.995 of the Public Resources Code is  
25 amended to read:

26 5097.995. (a) (1) Any person who unlawfully and  
27 maliciously excavates upon, removes, destroys, injures, or defaces  
28 a Native American historic, cultural, or sacred site, that is listed or  
29 may be eligible for listing in the California Register of Historic  
30 Resources pursuant to Section 5024.1 or the TTCS Register  
31 pursuant to Section 5097.96, including any historic or prehistoric  
32 ruins, any burial ground, any archaeological or historic site, any  
33 inscriptions made by Native Americans at such a site, any  
34 archaeological or historic Native American rock art, or any  
35 archaeological or historic feature of a Native American historic,  
36 cultural, or sacred site is guilty of a misdemeanor if the act was  
37 *knowingly* committed with specific intent to vandalize, deface,  
38 destroy, steal, convert, possess, collect, or sell a Native American  
39 historic, cultural, or sacred artifact, art object, inscription, or  
40 feature, or site and the act was committed as follows:



1 (A) On public land.

2 (B) On private land, by a person, other than the landowner, as  
3 described in subdivision (b).

4 (2) A violation of this section is punishable by imprisonment  
5 in the county jail for up to one year, by a fine not to exceed ten  
6 thousand dollars (\$10,000), or by both that fine and imprisonment.

7 (b) This section does not apply to any of the following:

8 (1) Any act taken in accordance with, or pursuant to, an  
9 agreement entered into pursuant to subdivision (o) of Section  
10 5097.94.

11 (2) Any action taken pursuant to Section 5097.98.

12 (3) Any act taken in accordance with Section 21097 and other  
13 applicable sections of the California Environmental Quality Act  
14 (Division 13 (commencing with Section 21000)).

15 (4) Any act taken in accordance with the National  
16 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

17 (5) Any act authorized under the Z'berg-Nejedly Forest  
18 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)  
19 of Part 2 of Division 4).

20 (6) Any action taken with respect to a conservation easement  
21 in accordance with Chapter 4 (commencing with Section 815) of  
22 Division 2 of the Civil Code, or any similar nonperpetual  
23 enforceable restriction that has as its purpose the conservation,  
24 maintenance, or provision of physical access of Native Americans  
25 to one or more Native American historic, cultural, or sacred sites,  
26 or pursuant to a contractual agreement for that purpose to which  
27 most likely descendents of historic Native American inhabitants  
28 are signatories.

29 (7) Any otherwise lawful act undertaken by the owner, or an  
30 employee or authorized agent of the owner acting at the direction  
31 of the owner, of land on which artifacts, sites, or other Native  
32 American resources covered by this section are found, including,  
33 but not limited to, farming, ranching, forestry, improvements,  
34 investigations into the characteristics of the property conducted in  
35 a manner that minimizes adverse impacts unnecessary to that  
36 purpose, and the sale, lease, exchange, or financing of real  
37 property.

38 (8) Research conducted under the auspices of an accredited  
39 postsecondary educational institution or other legitimate research  
40 institution on public land in accordance with applicable permitting



1 requirements or on private land in accordance with otherwise  
2 applicable law.

3 SEC. 28. Section 21084.3 is added to the Public Resources  
4 Code, to read:

5 21084.3. (a) A project that may cause a substantial adverse  
6 change, as defined in subdivision (l) of Section 5097.10, in a site  
7 that is listed in the Traditional Tribal Cultural Site Register  
8 established pursuant to Section 5097.95 may not be exempted  
9 from this division pursuant to subdivision (a) of Section 21084.

10 (b) This section shall become operative on the 121st day after  
11 the date of filing with the Secretary of State the initial set of  
12 regulations adopted by the Native American Heritage  
13 Commission to implement subdivision (d) of Section 5097.94,  
14 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of  
15 Section 5097.96.5, whichever occurs last.

16 SEC. 29. Section 21097 is added to the Public Resources  
17 Code, to read:

18 21097. (a) A project that may cause a substantial adverse  
19 change in a TTCS, as defined in subdivision (m) of Section  
20 5097.10, is a project that may have a significant effect on the  
21 environment. For purposes of this section, a TTCS is a site listed  
22 in, or determined by the Native American Heritage Commission  
23 to be eligible for listing in, the Traditional Tribal Cultural Site  
24 Register established under Section 5097.96. A site that is not listed  
25 in the TTCS Register is not precluded from being afforded  
26 protection under this division so long as the commission  
27 determines that the site is eligible for listing pursuant to  
28 subdivision (b) of Section 5097.96.1.

29 (b) As used in this section, “substantial adverse change in a  
30 TTCS” has the same meaning as in subdivision (l) of Section  
31 5097.10.

32 (c) For purposes of this section, “Native American tribes” and  
33 “appropriate Native American tribes” have the meaning provided  
34 in subdivisions (a) and (j), respectively, of Section 5097.10.

35 (d) At the time that a lead agency determines that an activity is  
36 a project and is not exempt from this division, the lead agency shall  
37 provide written notice of the proposed project to the Native  
38 American tribes identified on the Native American Contact List  
39 pursuant to subdivision (d) of Section 5097.94 and to the Native



1 American Heritage Commission. The notice shall do all of the  
2 following:

3 (1) Inform Native American tribes of their right to request  
4 consultation, including for a determination of a site's eligibility for  
5 listing in the TTCS Register pursuant to 5097.96.1, with the Native  
6 American Heritage Commission within 20 days of the receipt of  
7 notice by certified mail.

8 (2) Provide sufficient information describing the proposed  
9 project, including a project map, to enable the Native American  
10 tribes to consult with the commission to identify any TTCS that  
11 may be affected by the proposed project.

12 (3) Include a copy of the service list.

13 (e) Upon receipt of a timely written request for consultation  
14 pursuant to paragraph (1) of subdivision (d), the Native American  
15 Heritage Commission shall promptly initiate consultation,  
16 consistent with Section 5097.96.1, to evaluate and determine  
17 whether a TTCS may be affected by the proposed project. Nothing  
18 in this section precludes the Native American tribes from electing  
19 to participate through the regular public comment process  
20 afforded by this division.

21 (f) After receiving notice from the lead agency pursuant to  
22 subdivision (d), the commission shall notify the lead agency and  
23 any appropriate Native American tribes that consulted with the  
24 commission, in writing of its *final* determination not later than the  
25 expiration of the period determined pursuant to subdivision (e) of  
26 Section 5097.96.1. Any written notice by the commission  
27 determining that there are no TTCSs affected by the proposed  
28 project shall be ~~final~~ a *final determination* and no further  
29 consultation is required under this division.

30 (g) Whenever the Native American Heritage Commission  
31 determines that a TTCS may be affected by the proposed project  
32 pursuant to subdivision (f), the commission shall proceed with  
33 consultation, in accordance with Sections 5097.96.1 and  
34 5097.96.2, to determine whether the proposed project will cause  
35 a substantial adverse change in a TTCS, and to identify project  
36 changes or mitigation measures, if any, that would avoid or reduce  
37 the substantial adverse change. After notifying the lead agency  
38 that a TTCS may be affected by the proposed project, the  
39 commission shall notify in writing, the lead agency, project  
40 proponents, and any appropriate Native American tribes that



1 consulted with the commission pursuant to this section, of ~~this~~ *its*  
2 *final* determination not later than the expiration of the period  
3 determined pursuant to subdivision (a) of Section 5097.96.2. Any  
4 written notice by the commission ~~determining~~ *of its final*  
5 *determination* that a proposed project will not result in a  
6 substantial adverse change to a TTCS shall constitute substantial  
7 evidence upon which the lead agency may rely.

8 (h) To facilitate the consultation process, the lead agency shall,  
9 in cooperation with the commission, arrange for a visit to the  
10 project site by authorized representatives of appropriate Native  
11 American tribes (as determined by the commission) if the  
12 following conditions are met:

13 (1) The appropriate Native American tribe requests, in writing,  
14 lead agency assistance to arrange for a visit to the project site.

15 (2) The request demonstrates that the visit is necessary to show  
16 the location or boundaries of a TTCS, evaluate the potential for  
17 substantial adverse change to a TTCS, or assist in the development  
18 of project changes or mitigation measures.

19 (3) The request is submitted to the lead agency prior to the close  
20 of public comment period.

21 (4) The lead agency secures permission from the landowner or  
22 can escort the authorized representative onto the property within  
23 existing authority to carry out inspections on the property.

24 (i) Where the commission ~~determines~~ *makes a final*  
25 *determination* that a proposed project will result in a substantial  
26 adverse change to a TTCS, the lead agency shall do the following:

27 (1) If the project proponent, the commission, and all  
28 appropriate Native American tribes who participated in the  
29 consultation process agree, as a result of the consultation required  
30 by subdivision (g), to incorporate project changes or mitigation  
31 measures that will avoid or reduce potential adverse changes to a  
32 TTCS to below a level of significance, the lead agency shall  
33 conclude that any adverse changes to a TTCS are less than  
34 significant. The project changes or mitigation measures that  
35 provide the basis for the lead agency's determination shall be  
36 identified in a confidential appendix to the final environmental  
37 impact report or mitigated negative declaration. The project  
38 changes or mitigation measures identified in the final  
39 environmental impact report or mitigated negative declaration,  
40 together with the concurrence of the appropriate Native American



1 tribes who participated in the consultation process, the project  
2 proponent and the commission, shall constitute substantial  
3 evidence supporting the lead agency’s conclusion that adverse  
4 changes in a TTCS are less than significant.

5 (2) If the project proponent, the commission, and all  
6 appropriate Native American tribes who participated in the  
7 consultation process do not agree to project changes or mitigation  
8 measures, as a result of the consultation required by subdivision  
9 (g), the commission shall evaluate and provide a written  
10 recommendation to the lead agency identifying project changes or  
11 mitigation measures, if any, that would avoid or reduce potential  
12 adverse changes to a TTCS. The lead agency, when making  
13 findings required by paragraph (1) of subdivision (a) of Section  
14 21081, or when adopting a mitigated negative declaration  
15 pursuant to paragraph (2) of subdivision (c) of Section 21080, shall  
16 consider the recommendation of the commission and shall adopt  
17 all project changes or mitigation measures necessary to avoid or  
18 reduce substantial adverse changes to any TTCS identified  
19 pursuant to this section that the lead agency determines, based on  
20 substantial evidence in light of the whole record, are feasible.

21 (j) (1) In addition to the findings required by subdivision (b)  
22 of Section 21081, a public agency may not approve or carry out a  
23 project that will result in a substantial adverse change in a TTCS  
24 unless it has provided notice to, and made a good faith effort to  
25 consult with the Native American Heritage Commission and all  
26 appropriate Native American tribes, and unless the public agency  
27 finds that all means for preserving the TTCS have been considered  
28 to the maximum extent practicable.

29 (2) If a project located on state lands or federal lands managed  
30 by the state will result in a substantial adverse change in a TTCS,  
31 a public agency may not approve, carry out, or subsidize the  
32 project unless the lead agency, based on substantial evidence in the  
33 record, does one of the following:

34 (A) Makes the finding described in paragraph (1) or (2) of  
35 subdivision (a) of Section 21081, or both, with respect to the  
36 project’s affect on the TTCS.

37 (B) Finds there is no legal or feasible way to accomplish the  
38 project purpose without causing the substantial adverse change, all  
39 feasible mitigation or avoidance measures have been incorporated



1 into the project, and there is an overriding environmental, public  
2 health, or safety reason to approve the project.

3 The findings described in subparagraphs (A) and (B) may be  
4 made only after the lead agency provides 30 days notice to any  
5 appropriate Native American tribes and an opportunity for those  
6 tribes to comment on the proposed finding. For purposes of this  
7 paragraph, “federal lands” means any land or interest in land  
8 owned by the United States, including a leasehold interest held by  
9 the United States, except for Indian trust lands. “Indian trust  
10 lands” are lands held in trust by the United States on behalf of  
11 tribal governments or individuals. Indian trust lands are  
12 predominantly, though not solely, reservation lands.

13 (k) For purposes of this division, the Native American Heritage  
14 Commission shall be considered a trustee agency having  
15 jurisdiction by law over Native American archeological resources  
16 and TTCSs. The trustee agency status of the commission may not  
17 be construed to impair or alter any sovereign rights a Native  
18 American tribe may have with respect to any of those resources.

19 (l) (1) All regulatory programs certified by the Secretary for  
20 Resources pursuant to Section 21080.5 shall comply with the  
21 requirements set forth in this section. If a state agency’s certified  
22 regulatory program does not comply with all of the requirements  
23 of this section by January 1, 2005, that agency shall submit to the  
24 secretary an explanation detailing why the certified regulatory  
25 program should remain unchanged and how the program  
26 nevertheless meets the objectives of Chapter 1.75 (commencing  
27 with Section 5097.9) of Division 5 and any other applicable  
28 provisions of this division that pertain to TTCSs. The explanation  
29 shall include all of the following:

30 (A) A written summary and overview of the certified  
31 regulatory program, including a detailed description of its analysis  
32 of impacts to TTCSs or Native American archaeological  
33 resources.

34 (B) Citations to the program’s provisions for notice and  
35 consultation with appropriate Native American tribes and the  
36 Native American Heritage Commission.

37 (C) Citations to the program’s provisions incorporating the  
38 Native American Heritage Commission’s final determinations of  
39 substantial adverse change into any findings or determinations



1 made by the agency administering the certified regulatory  
2 program.

3 (D) A written summary of how a meaningful consultation  
4 process, as defined in Section 5097.10, was incorporated.

5 (2) On or before January 1, 2006, the Secretary of the  
6 Resources Agency shall notify the state agency as to whether its  
7 program meets the objectives of Chapter 1.75 (commencing with  
8 Section 5097.9) of Division 5 and any other applicable provisions  
9 of this division that pertain to TTCSs. If the secretary ~~determines~~  
10 *decides* that the program does not meet those objectives, the  
11 secretary shall suggest changes to the program or withdraw  
12 certification. The secretary shall specify in writing the reasons for  
13 his or her ~~determination~~ *decision*. The secretary shall consult with  
14 the Native American Heritage Commission in carrying out this  
15 subdivision.

16 (m) In the case of a project described in subdivision (c) of  
17 Section 21065, the project proponent may request, prior to the  
18 filing of an application with the lead agency, that the lead agency  
19 provide notice pursuant to subdivision (d).

20 (n) Any proceeding or finding under this section is subject to  
21 the confidentiality provisions of Section 5097.96.5.

22 (o) In all actions or proceedings brought pursuant to this  
23 section, including the hearing of an action or proceeding on appeal  
24 from the decision of a lower court, all courts shall protect the  
25 confidentiality of information that would create a risk of harm to  
26 the TTCS by disclosing, for example, its specific identity, location,  
27 character, or use. If and to the extent there is a risk of harm, the  
28 court shall conduct its proceedings in camera and shall seal records  
29 of the proceeding and papers filed with the court. In ~~determining~~  
30 *deciding* whether there is a risk of harm to a TTCS, the court may  
31 ask the commission to file a brief addressing that issue and may,  
32 in the interim, seal records and papers and conduct hearings in  
33 camera until it makes a ~~final determination~~ *decision* on the risk of  
34 harm issue.

35 (p) Any person who consulted with the Native American  
36 Heritage Commission pursuant to Section 5097.96.1, 5097.96.2,  
37 or 5097.96.3 and presented to the Native American Heritage  
38 Commission and the lead agency an objection to the approval of  
39 the project and the alleged grounds for noncompliance with this  
40 division, orally or in writing during the comment period, is



1 deemed to have complied with Section 21177; provided, however,  
2 that any action or proceeding to challenge a *final* determination of  
3 the Native American Heritage Commission pursuant to Chapter  
4 1.75 (commencing with Section 5097.09) of Division 5 shall be  
5 brought pursuant to Section 5097.96.4.

6 (q) (1) For a project defined by subdivision (c) of Section  
7 21065, the lead agency shall, prior to a determination pursuant to  
8 Section 21080.1, consult with the Native American Heritage  
9 Commission and the appropriate Native American tribes to  
10 identify the existence of, or the probable likelihood of, Native  
11 American human remains and associated grave goods.

12 (2) If, as a result of the consultation required by paragraph (1),  
13 the lead agency determines that Native American human remains  
14 and associated grave goods may be disturbed, the lead agency shall  
15 ensure that the following steps are completed prior to approval of  
16 the project:

17 (A) Develop an avoidance and mitigation plan in consultation  
18 with any appropriate Native American tribes, and the Native  
19 American Heritage Commission to prevent or minimize  
20 destruction, removal, or reburial of the Native American human  
21 remains and associated grave goods. The plan shall address the  
22 potential discovery of Native American human remains and  
23 associated grave goods, and potential reburial onsite and  
24 disposition of cultural resources.

25 (B) The project proponent shall employ a Native American  
26 monitor to monitor ground disturbance activities associated with  
27 the proposed project in areas where Native American human  
28 remains, associated grave goods, and cultural resources may be  
29 discovered. Guidelines for monitoring adopted pursuant to  
30 subdivision (o) of Section 5097.94 may be adopted by the Native  
31 American Heritage Commission. In selecting a Native American  
32 monitor, the project proponent shall give preference to Native  
33 Americans with traditional ties to the project area.

34 (r) No lead agency and no responsible agency may approve a  
35 project in any area that is designated as Class C (Controlled Use)  
36 or Class L (Limited Use) lands, or designated as an Area of Critical  
37 Environmental Concern under the California Desert Conservation  
38 Area Plan of 1980, as amended, by the Bureau of Land  
39 Management of the United States Department of the Interior,  
40 pursuant to Section 1781 of Title 43 of the United States Code, in



1 any case where the federal Advisory Council on Historic  
2 Preservation, pursuant to Section 106 of the National Historic  
3 Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), has  
4 recommended to any federal agency that approval for the project  
5 be denied because the project would effectively destroy the  
6 historical resources in the project area.

7 (s) This section shall become operative on the 121st day after  
8 the date of filing with the Secretary of State the initial set of  
9 regulations adopted by the Native American Heritage  
10 Commission to implement subdivision (d) of Section 5097.94,  
11 subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of  
12 Section 5097.96.5, whichever occurs last.

13 (t) If any provision of this section or the application thereof to  
14 any person or circumstance is held invalid, that invalidity may not  
15 affect other provisions or applications of this section that can be  
16 given effect without the invalid provision or application thereof,  
17 and to this end the provisions of this section are severable.

18 (u) This section does not apply to a project that the United  
19 States Secretary of Defense, *or his or her designee*, has determined  
20 is necessary for national security.

21 SEC. 30. No reimbursement is required by this act pursuant  
22 to Section 6 of Article XIII B of the California Constitution for  
23 certain costs that may be incurred by a local agency or school  
24 district because in that regard this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 However, notwithstanding Section 17610 of the Government  
31 Code, if the Commission on State Mandates determines that this  
32 act contains other costs mandated by the state, reimbursement to  
33 local agencies and school districts for those costs shall be made  
34 pursuant to Part 7 (commencing with Section 17500) of Division  
35 4 of Title 2 of the Government Code. If the statewide cost of the  
36 claim for reimbursement does not exceed one million dollars  
37 (\$1,000,000), reimbursement shall be made from the State  
38 Mandates Claims Fund.

39 SEC. 31. This act is an urgency statute necessary for the  
40 immediate preservation of the public peace, health, or safety



1 within the meaning of Article IV of the Constitution and shall go  
2 into immediate effect. The facts constituting the necessity are:  
3 In order to stem the continuing loss of sacred sites as soon as  
4 possible, it is necessary that this act go into effect immediately.

O

